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IN THE

Supreme Court of the United States

October Term, 1964
No. .....

CHASE CAPITAL CORPORATION, dba QUAIL VALLEY COUNTRY CLUB.

Petitioner,

vs.

A. J. BUMB, receiver-trustee for CHASE CAPITAL CORPORATION, a debtor-bankrupt,

Respondent.

Opposition Brief Filed, Pursuant to Provisions of Rule 24(1) Disclosing Matters and Grounds Why the Case Should Not Be Reviewed by the United States Supreme Court.

A. J. Bumb, the receiver-trustee for Chase Capital Corporation, dba Quail Valley Country Club, debtor-bankrupt and appellee in the within action in the United States Court of Appeals for the Ninth Circuit, presents herein, pursuant to the provisions of Supreme Court Rule 24(1), an opposition setting forth matters and grounds why the case should not be reviewed by this Court.

The judgment of the Court of Appeals was rendered October 6, 1964. Application for extension of time to file Petition for rehearing was filed November 5, 1964 and denied November 16, 1964. The Petition for Writ of Certiorari was thereafter filed.

Jurisdiction.

The rights and jurisdiction to file matters and grounds showing why the case should not be reviewed by this Court is under the provisions of Supreme Court Rule 24(1).

A. J. Bumb has appeared herein in the appeal before the United States Court of Appeals for the Ninth Circuit as receiver-trustee. He is the duly appointed, qualified and acting receiver in the said Chapter XI, Plan of Arrangement proceeding, filed by the petitioner herein, Chase Capital Corporation, dba Quail Valley Country Club on the 4th day of October, 1962 and following the making of the Order of Adjudication, he was duly appointed trustee.

Pursuant to the provisions of Section 1(12) "date of adjudication" shall mean the date of the filing of any petition which operates as an adjudication, or the date of entry of declaration of adjudication, or if such declaration is appealed from, then the date when such declaration is appealed from or the appeal dismissed.

Inasmuch as the Order of Adjudication is here on review before this Court and the said adjudication is not at this time finally confirmed, there is a question of A. J. Bumb's present status as trustee.

Opinion of United States Court of Appeals for the Ninth Circuit.

The opinion of the United States Court of Appeals for the Ninth Circuit appears in 336 F. 2d 1000. A copy thereof has been attached to petitioner's Petition for Writ of Certiorari.

Facts.

On October 4, 1962 Chase Capital Corporation, dba Quail Valley Country Club filed its debtor's proposed Plan of Arrangement proceeding under the provisions of Section 322 of Chapter XI. It did not file its proposed Plan of Arrangement until January 14, 1963. The same was timely noticed for hearing on notice to all creditors, the debtor and parties in interest for confirmation on February 13, 1963 at the hour of 2 P.M. thereof. The notice was an "omnibus" notice and provided further for hearing on the same date under the provisions of Section 376 of Chapter XI to either dismiss or make an Order of Adjudication, if the debtor's Plan of Arrangement was not confirmed.

The debtor abandoned its Plan of Arrangement as filed and the hearing for adjudication was currently continued from time to time and came on before the Referee six months later on August 21, 1963, at which time the Motion of the Securities and Exchange Commission to transfer the case to Chapter X proceedings was also heard.

Pursuant to the provisions of Section 376

> "or if an arrangement is not proposed in the manner and within the time fixed by the Court, or if an arrangement is withdrawn or abandoned prior

to its acceptance — (2) where the petition is filed under Section 322 of this Act, enter an Order, upon hearing after notice to debtor, creditors and such other persons as the Court may direct, either adjudicate the debtor a bankrupt and direct that bankruptcy be proceeded with pursuant to the provisions of this Act or dismiss the proceeding under this Chapter, whichever in the opinion of the Court may be in the best interest of creditors —"

At the continued hearing on August 21, 1963, the Referee determined that it was in the best interests of creditors that the Order of Adjudication be made. The said Order of Adjudication was made and filed on September 5, 1963. Upon review before the United States District Judge the Order of Adjudication was affirmed.

On October 6, 1964 the United States Court of Appeals for the Ninth Circuit made its Order affirming the Order of Adjudication. The essence of the said Order can be summarized in the short sentence: "We find no merit to this appeal".

The Petition for Writ of Certiorari sets forth astronomical figures with respect to the appraisal and/or value of the assets of the debtor in the amount of $5,000,000 by a former appraisal and in its schedules, the value of $7,390,734.55 in the form of real estate.

A. J. Bumb, receiver-trustee has reported that both of these values are greatly in excess of the present value.

The schedules set forth liabilities of $2,152,112.49 and the brief of the petitioner for Writ of Certiorari recites the same as "a little more than $2,000,000 of debts".

The major portion of the liabilities are evidenced by encumbrances on the major portion of the assets.

At the time of the original filing of the Chapter XI proceedings on October 4, 1962, there were various delinquences in taxes as well as interest upon the secured indebtedness. During the pendency of the proceeding and up to the present time, a period of in excess of twenty-six months, there have been further large accruals.

The receiver-trustee has had no funds with which to pay the same and eliminate the accruing interest and taxes and carry on operations.

Both, during the pendency of the Chapter XI proceeding and continuing for the period following September 5, 1963, the making of the Order of Adjudication, the receiver-trustee has been unable to effect sales of the property or any sale or liquidation which would permit him to properly care for and preserve the property and assets. The receiver-trustee reports he does not have adequate clear funds even for the payment of the printing of the within brief.

The officers of the debtor have stated to the Referee upon at least ten separate and distinct occasions, that attempts were being made to bring forward a refinancing and/or sales program which would permit it to go forward with its Plan of Arrangement. These

representations were further made following the Order of Adjudication, at which time the debtor was informed by the Referee that if it had any such plan or program it could refile its Chapter XI proceeding under the provisions of Section 321 of Chapter XI which section permits such filing in an adjudicated bankruptcy proceeding.

It would appear that the filing of the appeal as well as the pending Petition for Writ of Certiorari is for one purpose only, and that is to secure further extension of time within which the debtor can continue its search for funds to refinance and/or make a sale of its assets.

The Order of Adjudication was made herein and was based upon the provisions of Section 376(2) referred to herein as being "in the best interests of creditors."

During all of this period of time the secured creditors, as well as taxing authorities for current taxes, have been restrained and enjoined from foreclosing and this restraint cannot be interminable.

Matters and Grounds Showing Why Petition for Writ of Certiorari Should Be Dismissed.

The brief accompanying the Petition for Writ of Certiorari presents eight questions, all of which can be answered in direct opposition to the answers suggested by the petitioner:

1. While stockholders in a corporation are interested parties, in a Chapter XI proceeding, there is no legal or statutory provision for notice to them—the notice being given to the debtor corpora-

tion itself. It is conceivable that they have an opportunity to be heard and a voice in the proceeding, if they can contribute to the debtor in any manner in assisting it in bringing forward a Plan of Arrangement and/or refinancing and/or a sale of the assets.

2. As to whether the Referee erred in refusing to grant the motion of the Securities and Exchange Commission to transfer the proceedings into Chapter X. It is a matter of record that the said Order is final. The Order denying the said Motion was made on September 19, 1963 and upon review to the United States District Judge, the Order was affirmed and there was no appeal therefrom by the Securities and Exchange Commission, the debtor or any party in interest.

3. Likewise the question as to whether the United States District Court had jurisdiction to enter an Order of Adjudication without notice to stockholders and give them an opportunity to be heard before the making of the Order of Adjudication (with attendant power of sale of all of the assets). The answer is there was no such abuse of power.

4. The fourth question raises the point as to whether the corporation and its stockholders were deprived of due process of the law guaranteed by the Fifth Amendment of the Constitution of the United States and the question suggests that "none of the officers or stockholders were given notice upon the hearing resulting in the Order of Adjudication." The statutory hearing as provided

in Section 376(2) came on at the same time as the hearing on the debtor's Plan of Arrangement on February 13, 1963, notice of which hearing was given to the debtor, creditors and parties in interest and had been continued from time to time and the date and purpose thereof was known to all parties in interest.

5. The answer to the fifth question as to whether the corporation had the right to be represented by counsel is that as determined on appeal, it was represented by counsel at all of the hearings.

6. The Sixth question as to whether the proceeding and determination that the corporation was a bankrupt was arbitrary and capricious and violated the Fifth Amendment to the Constitution of the United States is answered by the statement that neither the Order of the Referee nor the decision of the United States Court of Appeals for the Ninth Circuit and Circuit Judges Walter L. Pope, Stanley N. Barnes or United States District Judge Bruce R. Thompson, sitting on said panel, was arbitrary and/or capricious. It is respectfully contended that the said Orders as made were properly and legally made and in conformance with the provisions of the bankruptcy law as well as in the interests of creditors.

7. The question is propounded as to whether stockholders and other parties have a right to a jury trial on the issues and whether the corporation was actually insolvent and/or whether the proceedings deprived the stockholders and other interested parties of their rights to test the question of

insolvency by a jury trial. The answer to this question is that when a debtor corporation (or individual) files a proceeding under the provisions of Chapter XI, Section 322, and it does not bring forward its Plan of Arrangement for the consideration of its creditors, the proceeding thereupon results in an Order of Adjudication, if the Referee determines it is in the best interests of creditors. It is true that where a request for a jury trial is timely made in an involuntary bankruptcy proceeding, the alleged bankrupt therein may, upon certain issues, demand a trial by jury, Bankruptcy Act, Section 19a. However, this is not an involuntary bankruptcy proceeding and there is no provision in the Bankruptcy Act otherwise, which requires and/or permits a trial by jury in a Chapter XI proceeding.

8. The final question is whether the United States District Court erred in failing to make findings of fact or whether findings of fact were ever made by said Court. The Order of the United States Court of Appeals for the Ninth Circuit, in addition to the ultimate portion of the Order, "we find no merit in this appeal", on this particular point stated, "The District Court was not required to enter its own findings of fact, if the findings of the Referee were adopted as they were in this case."

The decision of the United States Court of Appeals for the Ninth Circuit reciting in part:

"The notice actually given conformed to the requirements of the Bankruptcy Act and was completely adequate."

The present counsel for the petitioner to this Court, filed a like Petition for Writ of Certiorari following the making of an Order of Adjudication in a Chapter XI Plan of Arrangement proceeding in 1948 (*Trans-Pacific Corporation v. Goggin,* Petition for Writ of Certiorari. Order of Adjudication affirmed by United States Court of Appeals for the Ninth Circuit, 166 F.2d 1021).

It is a coincidence that practically the same points were therein asserted, *i.e.* no jury trial, Fifth Amendment, Seventh amendment, insufficient notice, capricious action of the Referee.

The petition was denied by this Honorable Court 335 U. S. 815, 69 S. Ct. 756, 93 L.ed. 320, October 11, 1948.

A further coincidence is that the present counsel herein for the respondent acted in said proceeding in opposition to the said Petition.

Respectfully submitted,

THOMAS S. TOBIN,
Attorney for A. J. Bumb, receiver-trustee, Respondent.